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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

13 REUBEN ISHII, MAYUMI ISHII, AND
14 KAYDEN ISHII, A MINOR, BY AND
15 THROUGH HIS GUARDIAN AD LITEM,
16 REUBEN ISHII, AND REUBEN ISHII AS
17 SUCCESSOR IN INTEREST OF KAYLEE
18 ISHII, DECEASED,

19 Plaintiff,

20 v.

21 SEARS, ROEBUCK AND CO.,
22 ELECTROLUX HOLDINGS
23 CORPORATION, FRIGIDAIRE,
24 ELECTROLUX MAJOR APPLIANCES
25 NORTH AMERICA, and DOES 1 to 100,
26 inclusive,

27 Defendant.

Case No. SACV 10-00832-JVS (RNBx)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Honorable Robert N. Block, Magistrate
Judge
Courtroom 10C

Filing Date: April 19, 2010
First Amended Complaint Filed: July 16,
2010
Second Amended Complaint Filed:
August 17, 2010

STIPULATED PROTECTIVE ORDER

Plaintiffs Reuben Ishii, Mayumi Ishii, Kayden Ishii, and Reuben Ishii as Successor in Interest of Kayley Ishii, deceased (collectively, “Plaintiffs”), and Defendants Electrolux Home Products, Inc. and Sears, Roebuck and Co. (collectively “Defendants”) assert that they possess confidential information in the form of trade secrets or other business, personal, privileged, and/or technical information, related to the subject matter of this litigation. The parties expect that such information will be disclosed by Plaintiffs and/or Defendants during discovery in this litigation. The parties desire to limit any disclosure and prevent the use of such information for purposes other than the prosecution and defense of this action. In addition, confidential information may be produced by non-parties. This Stipulated Protective Order (“Protective Order”) shall govern any document, material, item, testimony, information, or thing produced, served, generated or obtained during the discovery process or otherwise obtained in connection with this litigation, including but not limited to, entry onto land or premises and inspection of books, records documents and tangible things. The parties hereby stipulate to the following terms of a protective order regarding confidential information, and respectfully request that the Court enter this Protective Order.

DEFINITIONS

1. “Confidential Information” shall mean all originals and copies of documents in paper or electronic form and other materials or information not generally available to the public that a party to this action or a non-party believes in good faith contain confidential or proprietary technical, business, or personal information. By way of example, and not limitation, Confidential Information may include trade secrets or confidential research, inventory and unreleased products, current production processes in effect and future plans, sales, costs, profit/losses, financing, business or strategic plans, marketing plans or assessments, market forecasts, new product ideas or developments, technical information relating to

design, development, manufacture, assembly, marketing, and sale of products or services, test and system operation data, confidential information related to competitive bidding, medical records, and employment information including, without limitation, employment agreements, personnel files, personnel records, and earnings statements. Any information derived from Confidential Information also constitutes Confidential Information to the extent such derived information embodies, contains, or discloses any Confidential Information.

2. The term Confidential Information shall include all information, documents and things incorporating or reflecting Confidential Information including, without limitation, copies, drafts, summaries, compilations, abstracts, notes, derivatives, photographs, negatives, blow-ups, exhibits, communications in written or oral form, and similar things.

3. The parties agree that they will not designate any document, testimony or other material as Confidential Information unless they believe in good faith that the information so designated satisfies the criteria set forth in this Protective Order.

4. The parties agree that to the extent that information is designated as Confidential Information, the fact of such designation shall not constitute an express or implied waiver of any attorney-client or work product privilege with respect to such information.

QUALIFICATION

5. No item shall qualify for protection as Confidential Information if such item: (a) is disclosed in a printed publication available to the public or trade by reason of dissemination by one having the right and authorization to do so; (b) is independently developed by the receiving party, or comes to be known to the receiving party through means not constituting breach of any proprietary or confidential relationship or obligation or breach of this Protective Order; (c) is lawfully in the receiving party's possession prior to the disclosure unless the party's

1 previous lawful receipt of the information is subject to an obligation of non-
 2 disclosure; or (d) is lawfully received at a later date by the receiving party from a non-
 3 party who has the right or authorization to make such a disclosure. Further,
 4 Confidential Information shall not be construed to cover items obtained by a party
 5 independently of this litigation, when the item was obtained lawfully and without any
 6 obligation of confidentiality to a third party.

7 **DESIGNATION**

8 6. Confidential Information shall be designated and marked as
 9 follows:

10 a. Documents: Any document produced during discovery or
 11 otherwise disclosed in this action, and any information contained therein, may be
 12 designated by the producing party or non-party as Confidential Information by placing
 13 the following legend, or equivalent thereof, on any such document prior to production,
 14 service, filing, or presentation to the Court: "DESIGNATED AS CONFIDENTIAL
 15 INFORMATION FOR PURPOSES OF THIS LITIGATION ONLY." Such legend
 16 shall be placed upon the first page of the document containing Confidential
 17 Information and upon each page within such document considered to contain
 18 Confidential Information.

19 b. Electronic or Non-Written Materials: Any electronic or non-
 20 written Confidential Material (e.g., videotape, audio tape, computer disk, etc.) may be
 21 designated as such by labeling the outside of such non-written material as
 22 "DESIGNATED AS CONFIDENTIAL INFORMATION FOR PURPOSES OF THIS
 23 LITIGATION ONLY." If the Producing Party generates any "hard copy"
 24 transcription or printout from any designated non-written materials, then the
 25 instructions in paragraph (6)(a) will apply. In the event a Receiving Party generates
 26 any "hard copy" transcription or printout from any such designated non-written
 27 materials, the person who generates such "hard copy" transcription shall take
 28 reasonable steps to maintain the confidentiality of such materials.

1 c. Other Physical Exhibits: The confidential status of a physical
2 exhibit shall be indicated by placing a label on said physical exhibit designating it as
3 “DESIGNATED AS CONFIDENTIAL INFORMATION OF [DESIGNATING
4 PARTY] FOR PURPOSES OF THIS LITIGATION ONLY.”

5 d. Responses to Interrogatories/Requests for Admission: In the case
6 of information incorporated in answers to interrogatories or responses to requests for
7 admission, the appropriate legend shall be placed on each page of the answer or
8 response.

9 e. Deposition Proceedings: Designation of portions, or the entirety,
10 of deposition transcripts (including exhibits) as Confidential Information shall be
11 made by a statement to such effect on the record in the course of the deposition, or
12 upon review of such transcript by counsel for the designating party within thirty (30)
13 calendar days after counsel’s receipt of the transcript. Until the expiration of the thirty
14 (30) calendar day time period, all deposition transcripts will be treated by the parties
15 as Confidential Information, in their entirety. Upon designation of the transcript on
16 the record during the deposition, the party designating a portion of the transcript
17 confidential shall be allowed to exclude all persons to whom access to Confidential
18 Information has been denied under the terms of the Protective Order for the portion of
19 the deposition that contains Confidential Information. The Court Reporter or other
20 person recording the proceedings shall segregate any portion of the transcript of the
21 deposition which has been stated to contain Confidential Information and may furnish
22 copies of these segregated portions, in a sealed envelope, only to the deponent as
23 required by law, to the Court, and to counsel for the parties bound by the terms of this
24 Protective Order.

25 Designations made within thirty (30) calendar days after receipt of the
26 transcript of a deposition shall be made by sending written notice (by facsimile if
27 possible) to the Court Reporter, to counsel for all parties to this action, and to any
28 other person known to have a copy of said transcript. The notice shall reference this

1 Protective Order and identify the pages and/or exhibits or the transcript so designated.
 2 All copies of transcripts thus designated shall be marked with a notice indicating the
 3 confidentiality of the material therein and shall be governed by the terms of this
 4 Protective Order.

5 7. Court Procedures: In accordance with Local Rule 79-5.1, if any
 6 papers to be filed with the Court contain information and/or documents that have been
 7 designated as "Confidential Information," the proposed filing shall be accompanied by
 8 an application to file the papers or the portion thereof containing the designated
 9 information or documents (if such portion is segregable) and if appropriate, the
 10 application itself under seal; and the application shall be directed to the judge to whom
 11 the papers are directed. For motions, the parties shall publicly file a redacted version
 12 of the motion and supporting papers.

13 **ACCESS TO CONFIDENTIAL INFORMATION**

14 8. Access to Confidential Information shall be limited to those
 15 individuals identified in the following paragraphs and the Court, the jury, employees
 16 of the Court, court reporters who transcribe depositions in this case, and videographers
 17 who videotape depositions in this case.

18 9. In the absence of written permission from the designating party or
 19 further order of the Court, Confidential Information shall not be disclosed to any
 20 person other than:

21 a. any named party to this litigation, including any present or former
 22 employee or agent thereof to whom it is necessary that the designated material be
 23 shown for purposes of the litigation;

24 b. outside counsel for parties to this litigation, and persons working
 25 solely in secretarial, clerical, and paralegal capacities and who are assisting those
 26 attorneys in this action, and persons working for outsourced copying services who
 27 assist in the copying of documents or materials;

28 c. authors, creators, addressees, and recipients who prior to disclosure

1 lawfully received or had access to the information;

2 d. expert witnesses or consultants (with the exception of jury and
3 graphics consultants who are dealt with in subsection (e) below), and the employees of
4 such experts or consultants who are assisting them, retained by the receiving party or
5 their respective attorneys in connection with this action after compliance with
6 Paragraph 10 herein;

7 e. jury consultants and consultants who assist in creating graphics,
8 demonstratives, demonstrations, and animations and persons who are assisting those
9 consultants in this action.

10 Prior to any permitted disclosure of Confidential Information to any
11 persons identified under subsections (c) or (e) of this paragraph, each such person
12 shall be furnished with a copy of this Protective Order and shall execute a written
13 statement under oath, in the form attached as Exhibit A, acknowledging that such
14 person is familiar with the provisions of this Protective Order and will abide by them.
15 A copy of such acknowledgement must be served on the other party by facsimile,
16 personal delivery, or overnight delivery before disclosure of Confidential Information
17 to that person. The original signed acknowledgement shall be kept by the employing
18 counsel.

19 10. Before any disclosure of Confidential Information to any non-party
20 expert witness or consultant identified in subsection (d) of Paragraph 9 is permitted,
21 the following requirements must be met:

22 a. A non-party expert witness or consultant shall be furnished with a
23 copy of this Protective Order and execute a written statement under oath, in the form
24 attached as Exhibit A, acknowledging that he/she has read and understands the
25 provisions of this Protective Order and will abide by them. No party will be required
26 to furnish a copy of the signature page for any designated expert until the court
27 ordered date for disclosure of expert witnesses.

28 b. A non-party expert witness or consultant shall identify to counsel

1 for the receiving party of the Confidential Information whether or not he/she was a
2 past employee, officer, consultant, or agent of: (1) a party, (2) any of its subsidiaries,
3 (3) any company that, as far as the non-party expert witness or consultant is aware,
4 performed services under a joint development or collaboration agreement with a party,
5 or (4) any company or entity that, as far as the non-party expert witness or consultant
6 is aware, competes directly or indirectly with a party;

7 c. A non-party expert witness or consultant shall confirm to counsel
8 for the receiving party of the Confidential Information that he/she is not a present
9 employee, officer, consultant, agent or is a current shareholder of: (1) a party, (2) any
10 of its subsidiaries, or (3) any company that, as far as the non-party expert witness or
11 consultant is aware, performed services under a joint development or collaboration
12 agreement with a party, or (4) any company or entity that, as far as the non-party
13 expert witness or consultant is aware, competes directly or indirectly with a party;

14 d. A non-party expert witness or consultant shall identify to counsel
15 for the receiving party of the Confidential Information any other relationship which
16 the non-expert witness or consultant in good faith believes may create a potential
17 conflict of interest.

18 In the event that the non-party expert witness or consultant identifies a
19 relationship under subsections (b), (c) or (d) of this Paragraph, counsel for the
20 receiving party must promptly disclose the nature of such relationship all other parties.
21 Confidential Information shall not be furnished by counsel for the receiving party to
22 the non-party expert witness or consultant until after ten (10) calendar days after the
23 disclosure requirements set forth in this Paragraph have been met. If any party objects
24 in writing within this ten-day period, no disclosure shall be made to such non-party
25 expert witness or consultant until after the disclosure sought is approved by the
26 objecting party or by the Court. If, after fulfilling the requirements of Local Rule 37-
27 1, the parties are unable to resolve a disagreement as to whether or not the non-party
28 expert witness or consultant may receive Confidential Information, then the objecting

1 party may move the Court requesting that the disclosure not be permitted, and it shall
2 be the burden of the party objecting to the disclosure to show that the disclosure
3 should not be made. The objecting party shall prepare its portion of an appropriate
4 joint stipulation and shall personally deliver, e-mail, or fax it to the opposing party
5 within fifteen (15) calendar days of the objecting party's written objection to
6 disclosure; otherwise, the objection is deemed waived. If either the ten-day period or
7 fifteen-day period referenced in this paragraph concludes on a weekend day or an
8 official Court holiday, the deadline shall be the next business day immediately
9 following such weekend day or official Court holiday. Nothing contained in this
10 paragraph is intended to abrogate or modify the obligation of each party to strictly
11 comply with all procedures provided in Local Rules 37-1 and 37-2.

12 **USE OF CONFIDENTIAL INFORMATION**

13 11. A party or non-party whose Confidential Information will be
14 discussed or disclosed during a deposition has the right to exclude from the deposition
15 room any persons to whom disclosure of Confidential Information is not authorized
16 under this Protective Order, but only during such time as Confidential Information is
17 being discussed or disclosed.

18 12. All documents, materials, items, things, transcripts or information
19 designated under this Protective Order as Confidential Information shall be kept and
20 maintained by the receiving party in such a manner as to ensure that access thereto is
21 limited to the persons properly having access thereto under the terms of this Protective
22 Order.

23 13. Nothing in this Protective Order shall limit either party or any
24 other person in the use of its, his, or her own documents, things, and/or information
25 for any purpose or from disclosing its, his, or her own Confidential Information to any
26 other person or from introducing such documents, things, and/or information into
27 evidence at any Court hearing or trial, subject to the applicable rules of evidence.

28 14. All Confidential Information produced in accordance with the

1 provisions of this Protective Order shall be utilized by the receiving party solely and
2 exclusively for this litigation and may not be used by the receiving party in connection
3 with any other litigation, actual or contemplated, or for any other purpose whatsoever.
4 Confidential Information produced in accordance with the provisions of this
5 Protective Order shall not be used for or in connection with research, development,
6 manufacture, sales or marketing of any product or service.

7 15. Material designated as Confidential Information may be disclosed
8 to mock jurors engaged by any consultant in preparation for trial, provided that any
9 such mock jurors shall first agree in writing to be bound by this Protective Order (by
10 signing a document substantially in the form of Exhibit A), and such agreement shall
11 be retained under the control of counsel until final termination of this action, as
12 defined in the preceding paragraph.

13 **DISPUTES AS TO DESIGNATION**

14 16. Each party and any non-party who has agreed in writing to be
15 bound by the terms of this Protective Order may designate, at its sole discretion, items
16 as Confidential Information. A party to this Protective Order who receives any
17 Confidential Information and disagrees with its designation as Confidential
18 Information, in full or in part, shall notify the designating party in writing. After
19 notification, the parties shall meet and confer, in accordance with the requirements of
20 Local Rule 37-1, regarding the designation and/or status of the subject information
21 proffered within the context of this Protective Order. If the recipient and designating
22 party are unable to concur upon the designation and/or status of the subject
23 information, any party to this Protective Order may raise the issue of the designation
24 or status to the Court through the procedure provided in Local Rule 37-2. The
25 information shall remain as designated under the status given to it by the designating
26 party unless and until the parties agree to change the designation or the Court rules on
27 the designation. It shall be the burden of the party challenging the designation to
28 show that the designation by the designating party is improper. Nothing contained in

1 this paragraph is intended to abrogate or modify the obligation of each party to strictly
2 comply with all procedures provided in Local Rules 37-1 and 37-2.

3 17. Nothing in this Protective Order shall constitute a waiver of the
4 right of any party to object at trial as to the authenticity, competency, relevance or
5 admissibility of any information or to the fact that any Confidential Information has
6 been so designated. Furthermore, nothing in this Protective Order shall constitute a
7 waiver of any party's right to file a motion in limine to preclude the trier of fact from
8 being advised of such designation during trial, nor shall this Protective Order, or
9 actions taken pursuant to it, constitute an admission that materials designated as either
10 Confidential Information actually are confidential.

11 **SURVIVAL**

12 18. This Protective Order shall survive the termination of this action
13 with respect to any Confidential Information without time limits. As defined in
14 Paragraph 15 above, "termination of this action" means the earlier of either (a) when
15 there is a settlement with prejudice of this litigation with respect to all causes of
16 action, or (b) when a final judgment ending this action is no longer subject to appeal.

17 19. Within sixty (60) days of termination of this action, all
18 Confidential Information of the other party shall be destroyed with certification of
19 such destruction provided to counsel for the producing party upon request, except that
20 outside counsel may keep one copy of a complete set of pleadings, depositions
21 transcripts and exhibits, trial exhibits entered into evidence, and attorney and
22 consultant work product for its own records.

23 20. Each party agreeing to be bound by this Protective Order submits
24 to the jurisdiction of the Court for purposes of enforcement, adjudicating claims of
25 breach, and administering damages and other remedies (including but not limited to
26 injunctive relief and monetary damages).

27 **INADVERTENT DISCLOSURE**

28 21. The inadvertent production or filing of documents and/or things, or

1 the inadvertent failure to designate portions of any deposition transcripts with a
2 Confidential Information designation will not constitute a waiver of confidentiality.
3 Any document or thing inadvertently produced without such designation shall, upon
4 written request to the receiving party made within twenty (20) calendar days of
5 learning of the inadvertent production or failure to designate, be either returned to the
6 producing party in order to affix a designation, or be affixed by the receiving party
7 with the designation requested by the producing party. The receiving party must treat
8 such documents and things with the noticed level of protection from the date such
9 notice is received. Disclosure prior to the receipt of notice of the revised designation
10 to persons not authorized to receive such information shall not be deemed a violation
11 of this Protective Order.

12 22. The inadvertent production by a party or a non-party of attorney-
13 client privileged or work product documents (regardless of the form) will not
14 constitute, and will not be argued to constitute, a waiver of the privileged status of
15 these documents or information. Any inadvertently produced document or
16 information subject to the attorney-client privilege or work product doctrine
17 (including all copies of such privileged documents and attorney notes created from the
18 privileged documents containing the substance of such privileged documents, or the
19 like, in the possession of the receiving party) shall be returned to the producing party,
20 or destroyed by the receiving party, upon written request to the receiving party which
21 identifies the inadvertently disclosed document and is made within twenty (20)
22 calendar days of the producing party learning of the inadvertent production of
23 privileged material.

24 23. If information designated pursuant to this Protective Order is
25 disclosed to any person other than in the manner authorized by this Protective Order,
26 the party responsible for this disclosure shall immediately bring all pertinent facts
27 relating to such disclosure to the attention of all interested parties, without prejudice to
28 other rights and remedies of the producing party, and shall use its best efforts to

1 prevent further improper disclosure. Nothing in this stipulation will be construed to
2 limit the ability of the non-producing party to request sanctions for the producing
3 party's disclosure of confidential information to third parties to whom production is
4 not authorized under this agreement.

5 **MODIFICATION**

6 24. The parties may by stipulation provide for exceptions to this
7 Protective Order, subject to the Court's approval, and any party may seek an order of
8 this Court seeking relief from or otherwise modifying or furthering this Protective
9 Order upon good cause shown.

10 **OBLIGATION OF PARTIES**

11 25. All of the parties and their counsel of record undertake to abide by,
12 and be bound by, the provisions of this Protective Order and to use due care to see that
13 its provisions are known and adhered to by those under their supervision or control.

14 26. Nothing in this Protective Order shall bar counsel from rendering
15 advice to their client with respect to this litigation and, in the course thereof, relying
16 upon any Confidential Information, provided counsel does not disclose Confidential
17 Information in a manner not specifically authorized under this Protective Order.

18 27. By entering this Protective Order and limiting the disclosure of
19 information in this case, this order shall not preclude another Court from finding that
20 information may be subject to disclosure in that case, notwithstanding the existence of
21 this confidentiality order. Any person or party subject to this Protective Order that
22 may be subject to a motion to disclose another party's information designated
23 confidential pursuant to this Protective Order shall promptly notify that party of the
24 motion so that it may have an opportunity to appear and be heard on whether that
25 information should be disclosed. However, nothing contained in this Order is
26 intended to be construed as authorizing a party to disobey a lawful subpoena issued in
27 another action.

STIPULATION

It is hereby stipulated that the foregoing Protective Order may be made and entered by the Court. It is further stipulated that the parties will abide by this Protective Order from the date of execution of this Stipulation. The parties, through their undersigned counsel, respectfully request that the Court enter this stipulation as an Order.

IT IS SO STIPULATED.

Dated: November 10, 2010

**KEVIN L. ELDER
PENNEY & ASSOCIATES**

/s/ Kevin Elder
Kevin Elder
Attorneys for Plaintiffs Reuben Ishii, Mayumi
Ishii, Kayden Ishii, and Reuben Ishii as
Successor in Interest of Kayley Ishii

DATED: November 10, 2010

**SAMUEL C. TAYLOR
TODD BENOFF
CASSANDRA HOOKS
ALSTON & BIRD LLP**

/s/ Todd Benoff
Todd Benoff
Attorneys for Defendants
Electrolux Home Products, Inc. and Sears,
Roebuck and Co.

ORDER

IT IS SO ORDERED.

DATED: November 12, 2010



Honorable Robert N. Block
Magistrate Judge of the District Court

EXHIBIT A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

REUBEN ISHII, MAYUMI ISHII, AND
KAYDEN ISHII, A MINOR, BY AND
THROUGH HIS GUARDIAN AD LITEM,
REUBEN ISHII, AND REUBEN ISHII AS
SUCCESSOR IN INTEREST OF KAYLEE
ISHII, DECEASED,

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SEARS, ROEBUCK AND CO.,
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CORPORATION, FRIGIDAIRE,
ELECTROLUX MAJOR APPLIANCES
NORTH AMERICA, and DOES 1 to 100,
inclusive,

Defendant.

Case No. SACV 10-00832-JVS (RNBx)

**AGREEMENT TO PROTECT
CONFIDENTIAL INFORMATION
AND COMPLY WITH THE
PROVISIONS OF PROTECTIVE
ORDER**

Honorable James V. Selna
Courtroom 10C

Filing Date: April 19, 2010
First Amended Complaint Filed: July 16,
2010
Second Amended Complaint Filed:
August 17, 2010

ACKNOWLEDGEMENT OF _____

I, _____, declare:

1. My address is _____

_____.

2. My present occupation is

_____. [Experts and consultants] I have been

retained by _____ in the capacity of

_____ to _____.

3. I have received a copy of the Protective Order in this action, and I
have carefully read and understand the provisions of the Protective Order.

4. I will comply with all the provisions of the Protective Order. I will
hold in confidence, will not disclose to anyone other than those persons specifically

1 authorized by the Protective Order, and will not copy or use except for purposes of
2 this action, any information designated Confidential Information. which I receive in
3 this action.

4 5. I will return all materials containing Confidential Information or
5 any portions or copies, summaries, abstracts or indices thereof which come into my
6 possession and documents or things which I have prepared relating thereto and
7 containing such Confidential Information, to counsel for the party by whom I am
8 retained or employed when my services in this matter have been concluded.

9 6. I hereby submit to the jurisdiction of the Court for the purposes of
10 enforcement, adjudicating claims of breach, and administering damages and other
11 remedies in connection with the terms and conditions of the Protective Order and the
12 terms and conditions of this Declaration.

13 Executed this ____ day of _____, at _____.

14
15 I declare under penalty of perjury under the laws of the United States and the
16 State of California that the foregoing is true and correct.